

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

11 CIV 4493

Civil No.

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MTA BUS NON-UNION EMPLOYEES RANK
AND FILE COMMITTEE,

Plaintiff,

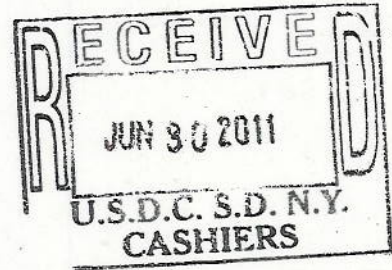
JUDGE RAKOFF

NOTICE OF REMOVAL

-against-

METROPOLITAN TRANSPORTATION
AUTHORITY, MTA NEW YORK CITY TRANSIT
and MTA BUS COMPANY,

Defendants.
-----x



Defendants Metropolitan Transportation Authority ("MTA"), New York City Transit Authority (sued as MTA New York City Transit) ("NYCT"), and MTA Bus Company ("MTA Bus"), by and through their undersigned counsel, hereby state:

1. Defendants seek to exercise their right, pursuant to 28 U.S.C. §§ 1441 and 1446, to remove this state court civil action to this Court from the Supreme Court of the State of New York, County of New York, in which it is pending under the name and style of MTA Bus Non-Union Employees Rank and File Committee v. Metropolitan Transportation Authority, MTA New York City Transit and MTA Bus Company, Index No. 11106337/2011.

2. The grounds for removal of this action are:

- a. This is a civil action in which the District Courts of the United States have been given original jurisdiction in that it arises under the Constitution and laws of the United States within the meaning of 28 U.S.C. § 1331.
- b. Specifically, as appears from the Summons with Notice (Exhibit A hereto), the plaintiff seeks damages based on defendants' alleged failure to provide equal

benefits in violation of the Equal Protection Clause of the United States Constitution and Section 13(c) of the Federal Transit Act, 49 U.S.C. § 5333(b). Therefore, this is an action over which this Court would have had original jurisdiction had it been filed initially in this Court.

- c. All of the other claims for relief asserted by the plaintiff in the Summons with Notice served in this action are so related to those claims in the action within this Court's original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution, so that this Court has supplemental jurisdiction over all such other claims pursuant to 28 U.S.C. § 1367(a).
- d. Therefore, removal to this Court is proper under the provisions of 28 U.S.C. § 1441(a) and (b).

3. Plaintiff served the Summons with Notice, which is its initial pleading, on June 3, 2011 on defendants MTA and NYCT and on June 7, 2011 on defendant MTA Bus. This Notice of Removal is thus filed within 30 days of all defendants' receipt of such initial pleading and therefore timely filed under 28 U.S.C. § 1446(b).

4. In accordance with 28 U.S.C. § 1446(a), attached as Exhibit A to this notice and incorporated by reference is a copy of the Summons with Notice, filed on May 31, 2011 in the Supreme Court of the State of New York, County of New York, under Index No. 11106337/2011, which is all of the process, pleadings, and orders served on defendants or any of them prior to their removal of this action.

5. Venue of this removal is proper under 28 U.S.C. § 1441(a) in the United States District Court for the Southern District of New York because this is the judicial district and division in which the action is pending in the Supreme Court of the State of New York, County of New York.

6. All of the defendants have consented to removal as evidenced by the signature of counsel below.

7. Pursuant to 28 U.S.C. 1446 (d), defendants will promptly serve written notice of the filing of this Notice of Removal with the Clerk of the Supreme Court of the State of New York, County of New York.

WHEREFORE, this Court should accept jurisdiction of this action and place it on this Court's docket for further proceedings as though it had been originally commenced in this Court.

Dated: New York, New York
June 30, 2011

Respectfully submitted,

JAMES B. HENLY
General Counsel
Metropolitan Transportation Authority
Attorney for Defendants

By: Mary Fisher Bernet
MARY FISHER BERNET (MB-6451)
Associate Counsel
Metropolitan Transportation Authority
347 Madison Avenue, 9th Floor
New York, New York 10017
(212) 878-1094

To: DEALY & SILBERSTEIN, LLP
Attorneys for Plaintiff
MTA Bus Non-Union Employees
Rank and File Committee
225 Broadway, Suite 1405
New York, New York 10007
(212) 385-0066

EXHIBIT A

Received
Date: 5/31/11 Time: 2:30 PM
SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

NEW YORK
COUNTY CLERKS OFFICE

MAY 31 2011

MTA BUS NON-UNION EMPLOYEES RANK
AND FILE COMMITTEE,

Index No.:
Date purchased:

NOT COMPARED
WITH COPY FILE

11106337

SUMMONS WITH NOTICE

Plaintiff,

- against -

METROPOLITAN TRANSPORTATION
AUTHORITY, MTA NEW YORK CITY TRANSIT
and MTA BUS COMPANY,

The basis of venue is Defendants'
principal place of business.

Defendants.

To the above named Defendants:

YOU ARE HEREBY SUMMONED TO APPEAR in this action by serving a Notice of Appearance on Plaintiff's undersigned attorneys within twenty (20) days after the service of this Summons, exclusive of the day of service, or within thirty (30) days after the service is complete if this summons is not personally delivered to you within the State of New York.

TAKE NOTICE THAT the nature of this action and the relief sought is to recover damages for Defendants' failure to provide pension benefits to Plaintiffs, violation of the Equal Protections Clauses of the New York and United States Constitutions, violations of the New York State Civil Service Law, violations of Section 13(c) of the Federal Transit Act, breach of contract, quantum meruit, and in case of your failure to appear, judgment will be taken against you by default for an amount to be determined at trial but believed to exceed the jurisdictional threshold, plus the costs and disbursements of this action.

Dated: New York, New York
May 31, 2011

Yours, etc.,

DEALY & SILBERSTEIN, LLP

By: 

Milo Silberstein

Attorneys for Plaintiff

MTA Bus Non-union Employees

Rank and File Committee

225 Broadway, Suite 1405

New York, New York 10007

(212) 385-0066

TO: Metropolitan Transportation Authority
347 Madison Avenue
New York, New York 10017

MTA New York City Transit
2 Broadway
New York, New York 10004

MTA Bus Company
2 Broadway
New York, New York 10004